Case 1:04-cv-01494-JJF Document 241-41 Filed 11/30/2007 Page 1 of 9

Exhibit 36

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      UNITED STATES DISTRICT COURT
      DISTRICT OF DELAWARE
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      MAGTEN ASSET MANAGEMENT CORPORATION and
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      LAW DEBENTURE TRUST COMPANY OF NEW YORK,
 7
                                     Plaintiffs,
 8
                       VS.
 9
      NORTHWESTERN CORPORATION,
10
                                     Defendant.
11
      Civil Action No. C.A. No. 04-1494 (JJF)
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      MAGTEN ASSET MANAGEMENT CORP.,
14
                                     Plaintiff
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15
      MICHAEL J. HANSON and ERNIE J. KINDT,
16
                                     Defendants
17
      Civil Action No. C.S. No. 05-499 (JJF)
18
19
                              July 12, 2007
20
                              9:30 a.m.
21
         CONFIDENTIAL -- ATTORNEYS' EYES ONLY
22
                 Deposition of TALTON R. EMBRY,
      held at the offices of Curtis,
23
      Mallet-Prevost, Colt & Mosle, 101 Park
      Avenue, New York, New York, before David
24
      Henry, a Certified Shorthand Reporter and
      Notary Public of the State of New York.
25
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2 Partnership? 3 A. It is not. 4 Q. With respect to Magten Asset 5 Management International Corporation, did 6 you ever buy any of the QUIP's at issue in 7 this litigation for the benefit of that 8 company? 9 A. Not that I recall. 10 Q. How about Magten Recovery 11 Associates? 12 A. I am unfamiliar with Magten 13 Recovery Associates. 14 Q. That is not a company that you 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIP's? 21 A. I believe my first purchases were 22 approximately in April of 2003. 23 Q. How did you come to learn of the 24 existence of the QUIP's as a potential 25 investment? Page 15 A. Through the news media. 3 Q. Do you remember specifically what 10 news media? 4 A. Through the news media. 5 A. I do not. 6 Q. Were you ever advised or was 10 there a recommendation made with respect to 11 the QUIP's at that time by any broker with 12 whom you might have a relationship? 13 Q. Do you remember anything from 14 Mr. Embry? 15 A. I saw information from Wall 16 Street on the CUIP's on the 17 on the QUIP's on the 18 Q. Do dou use a brokerage house to 19 Q. Do dou use a brokerage house to 20 Q. And then were talking about the 21 period immediately before the first 22 purchase of QUIP's by Magten? 23 A. I believe that's correct. 24 Q. At that time had you looked at ithe restated financials of Northwestern? 25 A. To the best of my knowledge, I 26 A. Not my secrifically what 27 no Do you remember anything from 28 the restated financials? 29 A. Not my secrifically what 21 no Do you understand the question, 29 A. Take the purchase of QUIP's form 20 no Do you understand the question, 20 A. On the were talking about the 21 period immediately before the first 22 purchase of QUIP's by Magten? 23 A. To the best of my knowledge, I 24 A. To the best of my knowledge, I 25 A. To the best of my knowledge in the first acquisition? 26 A. Not that it me would make money for your clients? And I think that's the 27 A	<u> </u>				
2 Partnership? 3 A. It is not. 4 Q. With respect to Magten Asset 5 Management International Corporation, did 6 you ever buy any of the QUIP's at issue in 7 this litigation for the benefit of that 8 company? 9 A. Not that I recall. 10 Q. How about Magten Recovery 11 Associates? 12 A. I am unfamiliar with Magten 13 Recovery Associates. 14 Q. That is not a company that you 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIP's? 21 A. I believe my first purchases were 21 approximately in April of 2003. 22 Q. How did you come to learn of the 22 existence of the QUIP's as a potential 23 investment? Page 15 1 A. Through the news media. 3 Q. Do you remember specifically what 4 news media? 4 A. Through the news media. 5 A. I do not. 6 Q. Were you ever advised or was 7 there a recommendation made with respect to the QUIP's at that time by any broker with 8 whom you might have a relationship? 10 M. S. TEINGART: Object as to form. Are you asking if the broker spoke to him about it? 11 Q. Do you understand the question, 12 Mr. Embry? 13 A. I did. 14 Q. Do you understand the question, 15 A. I aw information from Wall 16 Street on the company. I am not aware of 17 on the QUIP's in particular. 16 Q. Daid you use a brokerage house to 19 open market? 20 A. I did. 21 Q. Did you use a brokerage house to 19 open market? 22 A. I did. 23 Q. Do you use a brokerage house to 19 open market? 24 A. I did. 25 D. A. I did. 26 A. I did. 27 Q. Do you understand the question, and the purchase of the QUIP's on the 19 open market? 28 Q. Art did you bay the QUIP's on the 19 open market? 29 A. I did. 20 D. Did you use a brokerage house to 19 open market? 20 A. I did. 21 Q. Did you use a brokerage house to 19 open market? 22 A. I did. 23 Q. Do you remember specifically was a potential investment? 24 A. To the best of my knowledge, I had. 25 D. Q. Go you understand the question, and the purchase of the QUIP's from 19 open market? 26 A. I did.		Page 14		Page	16
3 A. It is not. 4 Q. With respect to Magten Asset 5 Management International Corporation, did 6 you ever buy any of the QUIP's at issue in 7 this litigation for the benefit of that 8 company? 9 A. Not that I recall. 10 Q. How about Magten Recovery 11 Associates? 12 A. I am unfamiliar with Magten 13 Recovery Associates. 14 Q. That is not a company that you 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIP's? 21 A. I believe my first purchases were 22 approximately in April of 2003. 3 Q. How did you come to learn of the 24 existence of the QUIP's as a potential 25 investment? Page 15 A. Through the news media. Q. Do you remember specifically what news media? A. I do not. 9 QuIP's? A. I dan time day ou to buy the 14 A Do Do you remember specifically. 15 Q. Do you remember specifically. 16 A. That was in the public record, 17 yess. 20 Q. And then we're talking about the 21 purchase of QUIP's by Magten? 22 A. I believe that's correct. 23 A. I believe that's correct. 24 Q. At that time had you looked at 25 there are commendation made with respect to 26 the QUIP's at that time by any broker with 27 whom you might have a relationship? 28 A. I saw information from Wall 29 A. I did. 20 Do you understand the question, 20 Do you understand the question, 21 A. To the best of my knowledge, I 22 A. To the best of my knowledge, I 23 A. Not in specifics, no. 24 A. Not in specifics, no. 25 How the first acquisition? 26 A. I do not. 27 Northwestern hat led you to buy the a purchase of the first acquisition? 28 A. I do not. 30 Do you remember specifically. 30 Do you remember specifically. 31 A. That was in the public record, 32 Yess. 32 A. I believe that's correct. 34 A. To the best of my knowledge, I 35 A. To the best of my knowledge, I 36 A. Not in specifics, no. 37 C. Given that the financials were 38 Testated financials? 39 A. Not in specifics, no. 30 Do you understand the question, 31 A. To the best of my knowledge o	1		1		
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5 Management International Corporation, did 6 you ever buy any of the QUIP's at issue in 7 this litigation for the benefit of that 8 company? 9 A. Not that I recall. 10 Q. How about Magten Recovery 11 Associates. 12 A. I am unfamiliar with Magten 13 Recovery Associates. 14 Q. That is not a company that you 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIP's? 21 A. I believe my first purchases were 22 approximately in April of 2003. 23 Q. How did you come to learn of the 24 existence of the QUIP's as a potential investment? 25 investment? 26 A. I do not. 27 Q. Were you ever advised or was there a recommendation made with respect to the QUIP's at that time by any broker with whom you might have a relationship? 28 A. I do not. 29 Q. Were you ever advised or was there a recommendation made with respect to the QUIP's at that time by any broker with whom you might have a relationship? 29 A. I saw information from Wall the Company. I am not aware of on the QUIP's in particular. 29 Q. And did you buy the QUIP's on the open market? 20 Q. And did you buse a brokerage house to 21 Q. Did you use a brokerage house to 22 Q. And did you buse a brokerage house to 23 Q. And did you buse a brokerage house to 24 Q. And that time did you have any concerns that Northwester might file for			3	used for the first acquisition?	
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o you ever only any of the QUIP's at issue in this litigation for the benefit of that company? 9 A. Not that I recall. 10 Q. How about Magten Recovery 11 Associates? 22 A. I am unfamiliar with Magten 13 Recovery Associates. 44 Q. That is not a company that you established? 15 A. Not that I am aware of. 16 Q. How about Magten Recovery Fund? 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIP's? 21 A. I believe my first purchases were approximately in April of 2003. 22 Q. How did you come to learn of the existence of the QUIP's as a potential investment? 19 A. Through the news media. 25 I denot. 26 Q. Were you ever advised or was there a recommendation made with respect to the QUIP's at that time by any broker with whom you might have a relationship? 10 MS. STEINGART: Object as to form. 11 Go. Do you understand the question, 11 Grown and that time that hortward in the purchase of QUIP's and that time by any broker with whom you might have a relationship? 10 MS. STEINGART: Object as to form. Are you asking if the broker spoke to him about it? 11 Q. Do you understand the question, 12 Grown and that time that led you to buy the QUIP's on the open market? 11 A. Not that I am aware of on the QUIP's in particular. 12 A. Through the news media. 23 Q. Do you remember specifically what news media? 24 A. I do not. 25 A. I do not. 26 Q. Were you ever advised or was there a recommendation made with respect to form. Are you asking if the broker spoke to him about it? 19 Q. Do you understand the question, 12 Grown and that time that lime had you looked at the restated financials? 11 A. To the best of my knowledge, I had. 12 A. To the best of my knowledge, I had. 13 Q. Do you understand the question, 14 Grown and that time that lime had you looked at the restated financials? 14 A. To the best of my knowledge, I had. 15 Stered on the company. I am not aware of on the QUIP's in particular. 18 Q. And did you buy the QUIP's on the open market? 19 Q. Did you use a broke	i .	Management International Corporation, did	5	Q. What do you remember learning in	
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s company? 9 A. Not that I recall. 10 Q. How about Magten Recovery 11 Associates? 12 A. I am unfamiliar with Magten 13 Recovery Associates. 14 Q. That is not a company that you established? 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIP's? 21 A. I believe my first purchases were approximately in April of 2003. 22 Q. How did you come to learn of the existence of the QUIP's as a potential investment? Page 15 1 A. Through the news media. Q. Do you remember specifically what news media? A. I do not. Q. Were you ever advised or was there a recommendation made with respect to the QUIP's at that time by any broker with whom you might have a relationship? A. I do not. Q. Do you ver advised or was there a recommendation made with respect to the POUP's at that time by any broker with whom you might have a relationship? A. I saw information from Wall Street on the company. I am not aware of on the QUIP's in particular. Q. And did you buy the QUIP's on the open market? A. I did. Q. Did you use a brokerage house to			7	Northwestern that led you to buy the	
10 Q. How about Magten Recovery 11 Associates? 12 A. I am unfamiliar with Magten 13 Recovery Associates. 14 Q. That is not a company that you 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIP's? 21 A. I believe my first purchases were 22 approximately in April of 2003. 23 Q. How did you come to learn of the 24 existence of the QUIP's as a potential 25 investment? Page 15 Page 15 A. Through the news media. 3 Q. Do you remember specifically what 4 news media? 4 A. Through the news media. 3 Q. Do you remember specifically what 4 news media? 5 A. I do not. 6 Q. Were you ever advised or was 4 there a recommendation made with respect to 8 the QUIP's at that time by any broker with 9 whom you might have a relationship? 10 MS. STEINGART: Object as to 11 form. 12 A. To the best of my knowledge, I 13 had. 14 Q. Do you remember anything from 15 those restated financials were 16 restated financials were 17 the providence of the first 18 had. 19 Q. Do you remember specifically what 19 news media? 10 A. To the best of my knowledge, I 11 had. 12 A. To the best of my knowledge, I 13 had. 14 D. Did you wishink that the purchase of QUIP's from 15 had. 16 Street on the company. I am not aware of 16 on the QUIP's in particular. 17 O. Do you understand the question, 18 A. That was in the public record, 19 yes. 20 Q. And then we're talking about the 21 period immediately before the first 22 purchase of QUIP's by Magten? 23 A. I believe that time had you looked at 24 be restated financials of Northwestern? 25 had. 26 O. Were you ever advised or was 27 there a recommendation made with respect to 28 the restated financials were 29 restated financials of Northwestern? 20 O. Given that the financial settlements for 2002? 21 A. To the best of my knowledge, I 22 A. To the best of my knowledge, I 23 A. To the best of my knowledge, I 24 A. Not in specifics, no. 25 Q. Green that the financials were 26 period immediately before the f	i .				
10 Q. Do you remember generally anything? 12 A. I am unfamiliar with Magten 13 Recovery Associates. 14 Q. That is not a company that you 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIPs? 21 A. I believe my first purchases were 22 approximately in April of 2003. 22 Q. How did you come to learn of the 23 approximately in April of 2003. 23 Q. How did you come to learn of the 24 existence of the QUIP's as a potential investment? Page 15 1 A. Through the news media. 2 Q. Do you remember specifically what news media? 3 Q. Do you remember specifically what news media? 4 news media? 5 A. I do not. 6 Q. Were you ever advised or was there a recommendation made with respect to the the QUIP's at that time by any broker with whom you might have a relationship? 10 MS. STEINGART: Object as to form. Are you asking if the broker spoke to him about it? 2 spoke to him about it? 3 Q. Do you understand the question, on the QUIP's in particular. 4 Mr. Embry? 5 A. I saw information from Wall 6 Street on the company. I am not aware of on the QUIP's in particular. 8 Q. And did you buy the QUIP's on the open market? 2 A. I did. 2 Q. Did you use a brokerage house to	-		E	A. I can't remember specifically.	
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Recovery Associates. 14 Q. That is not a company that you established? 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the QUIP's a proximately in April of 2003. 23 Q. How did you come to learn of the existence of the QUIP's as a potential investment? Page 15 A. Through the news media. Q. Do you remember specifically what news media? A. I do not. Q. Were you ever advised or was the course of the QUIP's at that time by any broker with whom you might have a relationship? MS. STEINGART: Object as to the QUIP's at that time by any broker with whom you might have a relationship? MS. STEINGART: Object as to form. A. To the best of my knowledge, I had. Q. Do you remember anything from the open market? Q. Do you understand the question, on the QUIP's in particular. Mr. Embry? A. I did. Q. Did you use a brokerage house to A. To the best of my knowledge, I had. Q. Do you remember anything from the public record, yes. Q. And then we're talking about the period immediately before the first purchases of QUIP's by Magten? A. That was in the public record, yes. Q. And then we're talking about the period immediately before the first purchases of QUIP's by Magten? A. To the best of my knowledge, I had. Q. Do you remember anything from the that the purchase of the QUIP's from Northwestern? Page 15 A. To the best of my knowledge, I had. Q. Do you remember anything from the vice them, what made you think that the purchase of the QUIP's from Northwestern at that time would make money for you used earlier. MS. STEINGART: Object as to form. A. To the best of my knowledge, I had. Q. Do you remember anything from the vice them, what made you think that the purchase of the QUIP's from Northwestern at that time would make money for you remember anything from the purchase of the QUIP's from Northwestern at that time would make money for you remember anything from the period immediately before the first purcha			11		
13 Q. Did you know at that time that 14 Northwestern had restated its financial 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the 20 QUIP's? 21 A. I believe my first purchases were 22 approximately in April of 2003. 23 Q. How did you come to learn of the 24 existence of the QUIP's as a potential 25 investment? Page 15 Page 15 A. Through the news media. Q. Do you remember specifically what 25 new media? A. I do not. Q. Were you ever advised or was 26 there a recommendation made with respect to 27 the QUIP's at that time by any broker with 28 whom you might have a relationship? 40 MS. STEINGART: Object as to 41 form. Are you asking if the broker 42 spoke to him about it? 43 Q. Do you understand the question, 44 Mr. Embry? 45 A. I saw information from Wall 46 Street on the company. I am not aware of 47 on the QUIP's on the 48 Open market? 49 Q. Did you use a brokerage house to 10 Q. Did you use a brokerage house to 11 thought that the discounted price and 11 though that time that 14 Northwestern had restated its financial 15 statements for 2002? MS. STEINGART: Object as to form. A. That was in the public record, yes. Q. And then were talking about the period immediately before the first purchase of QUIP's by Magten? 24 A. I do not. 25 A. I do not. 26 Q. And that time had you looked at 27 the restated financials of Northwestern? Page 15 A. To the best of my knowledge, I had. Q. Do you remember anything from those restated financials were restated and you had the opportunity to and did review them, what made you think that the purchase of the QUIP's from Northwestern had restated its financial A. That was in the public record, Yes. Q. And then were talking about the period immediately before the first purchase of QUIP's by Magten? A. I believe that's correct. A. To the best of my knowledge, I had. Q. Do you remember anything from those restated financials of Northwestern? A. Not in specifics, no. Q. Given t		A. I am unfamiliar with Magten	12	A. It's been a long time.	
14 Q. Inat is not a company that you setablished? 15 established? 16 A. Not that I am aware of. 17 Q. How about Magten Recovery Fund? 18 A. Not that I am aware of. 19 Q. When did you first acquire the QUIP's? 21 A. I believe my first purchases were approximately in April of 2003. 22 Q. How did you come to learn of the existence of the QUIP's as a potential investment? 24 existence of the QUIP's as a potential investment? 25 A. Through the news media. Q. Do you remember specifically what news media? A. I do not. Q. Were you ever advised or was there a recommendation made with respect to the QUIP's at that time by any broker with whom you might have a relationship? MS. STEINGART: Object as to form. Are you asking if the broker spoke to him about it? Q. Do you understand the question, Mr. Embry? A. I saw information from Wall Street on the company. I am not aware of on the QUIP's in particular. Q. And did you buy the QUIP's on the open market? Q. A. I did. Q. Did you use a brokerage house to concerns that Northwestern ait hat time did you have any concerns that Northwestern might file for			13	Q. Did you know at that time that	
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17 on the QUIP's in particular. 18 Q. And did you buy the QUIP's on the 19 open market? 18 I thought that the discount was sufficient 19 to make them sufficiently attractive. 20 A. I did. 21 Q. Did you use a brokerage house to 21 concerns that Northwestern might file for		Street on the company. I am not aware of			-
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19 open market? 20 A. I did. 21 Q. Did you use a brokerage house to 19 to make them sufficiently attractive. 20 Q. At that time did you have any 21 concerns that Northwestern might file for				I thought that the discount was sufficient	incidental.
20 A. I did. 21 Q. Did you use a brokerage house to 20 Q. At that time did you have any 21 concerns that Northwestern might file for				to make them sufficiently attractive	
Q. Did you use a brokerage house to 21 concerns that Northwestern might file for		A. I did.		O. At that time did you have any	
24 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2		Q. Did you use a brokerage house to		concerns that Northwestern might file for	
	22	buy those QUIP's?	22	reorganization in bankruptcy?	
23 A. Yes. 23 A. I did not know what the company				A. I did not know what the company	2000
24 Q. And which brokerage? 24 was going to do		Q. And which brokerage?		was going to do	
25 A. A variety, I believe. 25 Q. Well, I know that you didn't know	25				Cont.
Q. Wen, I know that you didn't know				and you didn't know	

	Page 18		Page 20
1		1	
2	what they were going to, but did you have	2	reviewed them, but I do not recall those
3	any concerns that that might be a direction	3	with any specificity.
4	in which the company might ultimately be	4	Q. Do you recall if you had reviewed
5	headed?	5	an 8K from December of 2002 in which the
6	A. I can't recall.	6	company issued a press release?
7	 Q. Did you at the time that you 	7	A. I don't recall it.
8	first acquired the QUIP's know anything	8	Q. Would it refresh your memory if I
9	about Northwestern Liability Limited	9	told that you that that 8K generally stated
10	Company?	10	that the company might have to restate its
11	A. Not that I am aware of.	11	financials for 2002 and that it was looking
12	Q. Do you know today what	12	into the matter?
13	Northwestern Energy, LLC is or was?	13	A. It would not refresh my memory.
14	A. I do not.	14	Q. At the time before you first
15	Q. At the time that you first bought	15	acquired the any of the QUIP's, did you
16	the QUIP's, did you make any inquiry about	16	review the unit purchase agreement between
17	the historic performance of Montana Power	17	Montana Power Company and Northwestern
18	Company?	18	Corporation for the acquisition of Montana
19	A. I reviewed the financial	19	Power Limited Liability Company?
20	information that was available.	20	A. I don't recall.
21	Q. And when you say financial	21	Q. At the time that you first
22	information that was available, from what	22	acquired the QUIP's, did you look at the
23	sources?	23	asset transfer agreement between
24 25	A. From the public documents that were filed by the company, 10-Q's and	24 25	Northwestern Corporation and Northwestern Energy for the transfer of certain assets
	Page 19		Page 21
1	rage 17	1	i ugo 2 i
1 2	10-K's.	2	and liabilities from the subsidiary to the
3	Q. When you say company, are you	3	parent?
4	talking about Montana Power Company?	4	A. I don't recall.
5	A. Northwestern.	5	Q. At that time before you first
6	Q. And do you recall which K's and	6	acquired QUIP's, did you look at the
7	Q's you have looked at, over what time	7	indenture that's related to the QUIP's?
8	period would they have covered?	8	A. To the best of my recollection, I
9	MS. STEINGART: Objection as to	9	did.
10	form.	10	Q. And did you look at the First
11	A. To the best of my recollection,	11	Amendment to the indenture?
12	it would have been the 2002 10-Q's and 2001	12	A. To the best of my recollection, I
13	10-K.	13	did.
	Q. So prior to buying the QUIP's,	14	Q. The second amendment?
14		15	A. Best of my recollection, I did.
	you did review the first quarter 2002?		O 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
15	you did review the first quarter 2002? A. To the best of my recollection.	16	Q. And also the third?
15 16		16 17	A. To the best of my recollection, I
14 15 16 17 18	A. To the best of my recollection.		· ·
15 16 17	A. To the best of my recollection.Q. And same with the second quarter?	17	A. To the best of my recollection, I
15 16 17 18	A. To the best of my recollection.Q. And same with the second quarter?A. To the best of my recollection.	17 18	A. To the best of my recollection, I did.
15 16 17 18 19	A. To the best of my recollection.Q. And same with the second quarter?A. To the best of my recollection.Q. And the third quarter?	17 18 19 20 21	A. To the best of my recollection, I did. Q. And did you also review at that time the assumption agreement under which Northwestern Corporation assumed
15 16 17 18 19 20	 A. To the best of my recollection. Q. And same with the second quarter? A. To the best of my recollection. Q. And the third quarter? A. To the best of my recollection. 	17 18 19 20	A. To the best of my recollection, I did. Q. And did you also review at that time the assumption agreement under which
15 16 17 18 19 20 21 22	 A. To the best of my recollection. Q. And same with the second quarter? A. To the best of my recollection. Q. And the third quarter? A. To the best of my recollection. Q. And then you reviewed the 	17 18 19 20 21	A. To the best of my recollection, I did. Q. And did you also review at that time the assumption agreement under which Northwestern Corporation assumed responsibility for payments related to the QUIP's?
15 16 17 18 19 20 21	 A. To the best of my recollection. Q. And same with the second quarter? A. To the best of my recollection. Q. And the third quarter? A. To the best of my recollection. Q. And then you reviewed the restated financials that were issued in 	17 18 19 20 21 22	A. To the best of my recollection, I did. Q. And did you also review at that time the assumption agreement under which Northwestern Corporation assumed responsibility for payments related to the

25 issued in April of 2003, I would have

24 25 did.

	Page 38		Page
1	O D1 1 1 1 1 1	1	
2	Q. Do you know who he is? A. I do.	2	A. That's correct.
		3	Q. And could you tell me why you
4	Q. And who is he?	4	sued Mr. Kindt?
5	A. I believe that he is a member of	5	A. Mr. Kindt, to the best of my
6	the board of Northwestern Corporation and	6	knowledge, was an officer of Clark Fork,
7	president of the company.	7	and was responsible for the assets and
8	Q. Do you know what position	8	liabilities of Clark Fork and owed a duty
9	Mr. Hanson held with Northwestern	9	to me as an investor in Clark Fork
0	Corporation in 2002?	10	Securities.
1	A. I cannot recall.	11	Q. Were you an investor in the
2	Q. Do you know if Mr. Hanson held	12	QUIP's in 2002? And when I say you, Magten
3	any positions with Northwestern Energy, LLC	13	on behalf of its clients.
4	in 2002?	14	A. No.
5	A. Do I know that now or did I know	15	Q. And do you have a different
6	that then?	16	reason for why you named Mr. Hanson as a
7	Q. Do you know that now?	17	defendant in this lawsuit, different than
8	A. I don't know.	18	the reason you gave me with respect to
9	Q. At the time when you first	19	Mr. Kindt?
0	acquired the QUIP's in 2003, did you know	20	A. Not that I am aware of.
1	of a Michael Hanson associated with	21	(Embry 1, Magten 14-16, marked for
2	Northwestern?	22	identification.)
3	A. Not that I can recall.	23	Q. I've handed you what has been
4	Q. And you've never met Mr. Hanson?	24	marked as Embry deposition Exhibit
5	MS. STEINGART: Face-to-face?	25	number 1. Can you just describe for me
	Page 39		Page 4
1		1	
2	A. I've been in a room with	2	what this document or set of documents is?
3	Mr. Hanson, but I don't believe that I've	3	A. This document is a Merrill Lynch
1	ever met him.	4	research piece dated 19 May, 2003 from the
5	Q. And when was that, that you were	5	high grade utility department, high grade
6	in the room with him?	6	credit research department.
7	A. Several years ago at a mediation.	7	Q. And on the front page there is a,
3	Q. Have you ever met Mr. Ernie	8	it looks like two e-mails, and that's Bates
)	Kindt?	9	number document 00014.
)	A. I have not.	10	A. Correct.
1	Q. Have you ever been in the same	11	Q. And the e-mail at the bottom, is
2	room as Mr. Kindt?	12	that the e-mail from Tatyana Dobryanskaya
3	A. Not that I am aware of.	13	at Merrill Lynch sending that report to
1	Q. In 2003 when you acquired the	14	you?
5	QUIP's, did you know of Ernie Kindt?	15	A. That is correct.
	A. Not that I am aware of.	16	
	Q. Sitting here today, what do you	17	Q. And who is Megan Costello?
5			MS. STEINGART: She's one of my associates.
5 7		10	SECOND TO SEE FROM
5 7 3	know about Mr. Kindt in terms of his	18	
5 7 3	know about Mr. Kindt in terms of his employment?	19	MR. KALECZYC: If you would
5 7 3)	know about Mr. Kindt in terms of his employment? A. Present?	19 20	MR. KALECZYC: If you would like to testify, Bonnie, we'll swear
5 7 3 9	know about Mr. Kindt in terms of his employment? A. Present? Q. Present or historical employment,	19 20 21	MR. KALECZYC: If you would like to testify, Bonnie, we'll swear you in.
5 7 8 9 1 1	know about Mr. Kindt in terms of his employment? A. Present? Q. Present or historical employment, either.	19 20 21 22	MR. KALECZYC: If you would like to testify, Bonnie, we'll swear you in. A. I can't recall.
5 7 3 9 1 1 2	know about Mr. Kindt in terms of his employment? A. Present? Q. Present or historical employment, either. A. Nothing specific.	19 20 21 22 23	MR. KALECZYC: If you would like to testify, Bonnie, we'll swear you in. A. I can't recall. Q. Now, the document that is Bates
5 7 3 9 1	know about Mr. Kindt in terms of his employment? A. Present? Q. Present or historical employment, either.	19 20 21 22	MR. KALECZYC: If you would like to testify, Bonnie, we'll swear you in. A. I can't recall.

25 the Therm Monitor report, you received that

25

Mr. Kindt as a defendant in a lawsuit?

	Page 00		Page 92
	Page 90		rage 92
1		1	
2	answered.	2	Q. The trade date, and if you look
3	A. As I have testified previously, I	3	at Deposition Exhibit 2, there is a trade
4	am not a registered investment advisor.	4	date in the third column. A. Yes.
5	Q. Have you ever been an investment	5	
6	advisor? A. I have been.	7	Q. Is that the date of acquisition in each instance?
7		8	A. That's correct.
8	Q. And when was that?	9	Q. Would it be fair for me to say
9 10	A. That was prior to I ceased to be a registered investment advisor in 2002.	10	that if I were to add up all of the
11	Q. And for how long were you a	11	purchases that were made prior to
12	registered investment advisor?	12	approximately September 15, 03, that that
13	A. From 1978.	13	would tell me how many QUIP's were bought,
14	Q. And did you voluntarily surrender	14	at least tell me how many QUIP's were
15	your registration in 2002?	15	bought prior to Northwestern going into
16	A. I did.	16	bankruptcy?
17	Q. Was that in any way in connection	17	A. Yes, it would.
18	with the SEC action that you previously	18	Q. And so anything after that date
19	testified to?	19	would be post bankruptcy and purchases?
20	A. No. The SEC action was	20	A. Yes, sir.
21	fulfilled, done, or signed, in 1993.	21	Q. And just so it's clear to me,
22	Q. Were you - I know that you	22	does Deposition Exhibit 2 show sales of
23	currently do not hold any licenses. Did	23	QUIP's or just purchases?
24	you ever hold any licenses as a securities	24	A. This shows just purchases.
25	dealer or an agent, registered rep?	25	Q. It's true though that some of
			D 03
	Page 91	AND	Page 93
1			•
2	A. No, sir.	2	your clients for whom you originally bought
2 3	A. No, sir.Q. You continued to buy QUIP's after	2 3	your clients for whom you originally bought QUIP's have sold their QUIP's some time
2 3 4	A. No, sir.Q. You continued to buy QUIP's afterNorthwestern Corporation filed for	2 3 4	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase?
2 3 4 5	A. No, sir. Q. You continued to buy QUIP's after Northwestern Corporation filed for reorganization and bankruptcy in September,	2 3 4 5	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase? MS. STEINGART: Objection as to
2 3 4 5 6	A. No, sir. Q. You continued to buy QUIP's after Northwestern Corporation filed for reorganization and bankruptcy in September, 2003, correct?	2 3 4 5 6	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase? MS. STEINGART: Objection as to form.
2 3 4 5 6 7	A. No, sir. Q. You continued to buy QUIP's after Northwestern Corporation filed for reorganization and bankruptcy in September, 2003, correct? A. Correct.	2 3 4 5 6 7	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase? MS. STEINGART: Objection as to form. A. I am aware of one small sale, and
2 3 4 5 6 7 8	A. No, sir. Q. You continued to buy QUIP's after Northwestern Corporation filed for reorganization and bankruptcy in September, 2003, correct? A. Correct. Q. Of the total million plus QUIP's	2 3 4 5 6 7 8	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase? MS. STEINGART: Objection as to form. A. I am aware of one small sale, and other than that I am not aware.
2 3 4 5 6 7 8 9	A. No, sir. Q. You continued to buy QUIP's after Northwestern Corporation filed for reorganization and bankruptcy in September, 2003, correct? A. Correct. Q. Of the total million plus QUIP's that you hold today, can you tell me	2 3 4 5 6 7 8 9	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase? MS. STEINGART: Objection as to form. A. I am aware of one small sale, and other than that I am not aware. Q. Were any of your clients for whom
2 3 4 5 6 7 8 9	A. No, sir. Q. You continued to buy QUIP's after Northwestern Corporation filed for reorganization and bankruptcy in September, 2003, correct? A. Correct. Q. Of the total million plus QUIP's that you hold today, can you tell me approximately how many were purchased prior	2 3 4 5 6 7 8 9	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase? MS. STEINGART: Objection as to form. A. I am aware of one small sale, and other than that I am not aware. Q. Were any of your clients for whom you acquired QUIP's part of the group of
2 3 4 5 6 7 8 9 10	A. No, sir. Q. You continued to buy QUIP's after Northwestern Corporation filed for reorganization and bankruptcy in September, 2003, correct? A. Correct. Q. Of the total million plus QUIP's that you hold today, can you tell me approximately how many were purchased prior to Northwestern going into bankruptcy?	2 3 4 5 6 7 8 9 10	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase? MS. STEINGART: Objection as to form. A. I am aware of one small sale, and other than that I am not aware. Q. Were any of your clients for whom you acquired QUIP's part of the group of QUIP's holders who elected to take from the
2 3 4 5 6 7 8 9 10 11 12	A. No, sir. Q. You continued to buy QUIP's after Northwestern Corporation filed for reorganization and bankruptcy in September, 2003, correct? A. Correct. Q. Of the total million plus QUIP's that you hold today, can you tell me approximately how many were purchased prior to Northwestern going into bankruptcy? A. I cannot.	2 3 4 5 6 7 8 9 10 11 12	your clients for whom you originally bought QUIP's have sold their QUIP's some time after their purchase? MS. STEINGART: Objection as to form. A. I am aware of one small sale, and other than that I am not aware. Q. Were any of your clients for whom you acquired QUIP's part of the group of QUIP's holders who elected to take from the plan of reorganization and bankruptcy for
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	1	
Northwestern had filed for bankruptcy in	1	A T J: J A l
September of 03?	2	A. I did not know.
	3	Q. Did you suspect prior to the
MS. STEINGART: Objection as to form.	4	filing that there might be a fraudulent
A. Yes.	5	activity?
	6	A. I did not know.
Q. In what way did it change?	7	Q. I didn't say whether you know,
A. Northwestern was in bankruptcy.	8	did you have any suspicion?
Q. Why did you continue to buy	9	A. I did not know.
QUIP's in Northwestern after Northwestern	10	Q. What do you mean by did not know?
was in bankruptcy?	11	A. That I was uncertain.
A. I thought it was a good	12	Q. But it was in your mind that that
investment.	13	might be the case prior to the filing in
Q. And why did you think it was a	14	bankruptcy?
good investment?	15	A. That it might be the case, yes.
A. Because the company had engaged	16	Q. And how much in advance of the
in a fraud which had which gave rise to	17	filing in bankruptcy did you begin to think
a fraudulent conveyance claim, which the	18	that that might be the case?
securities represent a claim on.	19	A. I don't know.
Q. Now, when you say the company	20	Q. Was it a week?
engaged in a fraud, what is the fraud that	21	A. I don't know.
you are referring to?	22	
A. That the company was unable to	23	Q. But it was not at the time when
that the company assumed the obligations of	24	you first bought the QUIP's, was it?
the QUIP's when it was unable to do so.	E	A. I don't remember.
the QOIT'S WHEN IT WAS UNABLE TO GO SO.	25	Q. How long after Northwestern
Page 95		Page 9
	1	
Q. And when did you come to the	1	declared handsmuntary did
determination that the company had engaged	2 3	declared bankruptcy did your uncertainty
in the fraud that you just described?	,	change to something more on the order of
A. I don't mean to be picky or	4	the certainty that a fraud of the type you
anything, what does determination mean?	5	described was committed?
When did I think or whom 4:4 I I - I	6	MS. STEINGART: Objection as to
When did I think or when did I I mean, did I determine?	7	form.
	8	A. In a month or two after the
Q. You can answer the question in	9	filing of the bankruptcy.
any way that you would like.	10	Q. And what led you to that
MC COPINIONIO III II 10	F	
MS. STEINGART: Well, if you	11	conclusion?
MS. STEINGART: Well, if you don't understand the question, then	11 12	conclusion? A. I hired Fried Frank to review the
MS. STEINGART: Well, if you	11	conclusion?

14 you indicate that you don't understand 15 it. If you understand it, you can 16 answer it. 17 A. Rework it, if you would. 18 Q. When did you learn that 19 Northwestern Corporation was in bankruptcy? 20 A. I believe the day it filed. 21 Q. Prior to the day that it filed, 22 had you come to a determination, did you 23 think that a fraud had been committed of 24 the type that you described a few minutes 25 ago?

MS. STEINGART: Other than consult with counsel, I think that's all he is permitted to testified to. THE WITNESS: I consulted with counsel. MS. STEINGART: And thereafter he is instructed on the basis of privilege not to answer. MR. PIZZURRO: Well, the line of questions we have right now is going to investment decisions and the reasons behind that that the witness

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	Page 114		Page 116
1		1	
2	office here in New York.	2	03 per QUIP was \$9.25.
3	Q. And was Katten Muchin	3	MS. STEINGART: I object. It
4	representing you at the time?	4	hasn't been established that this was
5	A. No.	5	the first, though it may very well be.
	Q. Were they representing	6	Q. I'm sorry, it was reflected as a
6	Mr. Ashner?	7	purchase of QUIP's at this time, was \$9.25
7		8	
8	A. No.		per QUIP, is that correct?
9	Q. Why were you and Mr. Ashner in	9	A. That is correct. Q. And by June of 2006, a little
10	the offices of Katten Muchin?	10	•
11	A. We're directors of the company.	11	more than three years later, you were
12	Q. Did you have any discussion with	12	willing to pay without negotiating, without
13	Mr. Ashner at that time regarding the claim	13	question, without further discussion, \$15,
14	that had been brought by Magten with	14	is that correct?
15	respect to the claims against Northwestern?	15	MS. STEINGART: I object as to
16	A. No.	16	form.
17	Q. Did Mr. Ashner ask you how the	17	A. Correct.
18	case was going?	18	Q. What caused you to be willing to
19	A. He might have, I can't remember.	19	pay \$15 per QUIP in June of 06 when you
20	Q. Do you know whether Mr. Ashner	20	were only willing to pay \$9.25 per QUIP in
21	was aware that there was a lawsuit being	21	late April of 03?
22	brought by Magten against Northwestern with	22	MS. STEINGART: Object as to
23	respect to the QUIP's?	23	form. That's not what the record
24	A. I believe that he was.	24	shows.
25	Q. And how did you know that?	25	A. The \$9.25 which I paid was what
			
	Page 115		Page 117
1		1	<u> </u>
2	A. I believe that I told him that.	2	the market offered on that date.
2 3	A. I believe that I told him that.Q. When did you tell him that?	2 3	the market offered on that date. Q. Do you know whether Mr. Ashner
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1 2 3	QUIP's and the QUIP's litigation? A. I cannot.	2	A. Russell.
4		3	Q. Is she still a client?
5	Q. Can you give us your best recollection of the sum and substance of	4	A. Yes.
6	any of the conversations that you had with	5	Q. Does your account hold QUIP's?
7	Mr. Bakal concerning the QUIP's and the	6 7	A. Yes, it does.
8	QUIP's lawsuit?		Q. Did you ever offer to purchase
9	MS. STEINGART: And that's	8 9	the Magten for yourself or any entity
10	other than the ones he's already	10	controlled by you to purchase QUIP's held
11	testified about, the more recent ones.	111	in the accounts of your other clients?
12	MR. PIZZURRO: Correct.	12	A. No.
13		13	Q. Did you cause Magten to invest in
13 14	A. Other than the only vague recollection that I have here is that after	13	QUIP's for the account of Ms. Russell
15	the settlement was denied — the settlement	15	subsequent to the time that Northwestern
6	was denied, and that we were back to square	16	filed for Chapter 11 in September of 03? A. I can't recall.
.7	one.	17	
8	Q. Is your recollection that in that	18	Q. Can you recall whether you caused an investment to be made for the account of
9	conversation, and I understand it may be	19	Mr. Bakal?
20	difficult to differentiate between or among	20	A. I can't recall.
1	different conversations on the same subject	21	
2	matter over a period of time, but is it	22	Q. Prior to the purchase of the 20
23	your recollection that in that conversation	23	thousand QUIP's from Mr. Ashner that we discussed earlier in June of 06
24	Mr. Bakal would have known about the	23	
25	proposed settlement?	25	A. May I correct the record here? I believe that I have been corrected by my
	Page 135		
1	rage 133	1	Page 1
2	A. To the best of my knowledge, he	2	counsel. We presented we have given you
3	did not know about the proposed settlement.	3	the trade tickets on that transaction,
4	Q. Do you have a recollection as	4	presented those to whoever, and I believe
5	best you can as to what Mr. Bakal's	5	it says May rather than June of 06, and I
6	response was to your informing him that the	6	just want to get that correction there. I
7	settlement had broken down?	7	think that's correct. I just want I
8	A. I can't recall.	8	don't want anybody to go crazy because the
9	Q. Okay, can you recall the sum and	9	May June thing.
0	substance of any other conversation or	10	Q. It takes a lot more than that to
1	conversations you may have had with	11	make me crazy.
2	Mr. Bakal other than that one to which you	12	A. In this matter, anything sets
3	just testified and the ones to which you	13	people off, pretty much.
4	earlier testified concerning the QUIP's	14	Q. Prior to the transaction of the
5	lawsuit?	15	20 thousand QUIP's of Mr. Ashner in the
6	A. Not that I can recall.	16	late spring of 2006, when was the most
7	Q. Any other clients that you	17	recent purchase by Magten of QUIP's?
8	discussed this lawsuit with?	18	A. I can't recall.
9	A. No.	19	Q. Do you recall as you sit here
0	Q. Is Mr. Bakal still a client?	20	today whether there were any purchases of
1	A. He is.	21	QUIP's between let's say the end of 2004
	0 5 11	0.0	
2	Q. Does his account still hold	22	and June of 2006?
2 3 4	Q. Does his account still hold QUIP's? A. It does	22	and June of 2006? A. I just don't know. I've been

MS. STEINGART: If you know,

25

24 here for --

24

25

A. It does.

Q. Is Ms. --